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"Mr. Watson—Come Here!"
New Rules for Electronic Communications by and to California Corporations

by Keith Paul Bishop

Introduction

Nearly 130 years ago, 29-year old Alexander Graham Bell shouted into a mouthpiece "Mr. Watson—come here—I want to see you." Thomas Watson, Mr. Bell's assistant, was stationed in another room. In his laboratory journal, Mr. Bell described what happened next: "To my delight he came and declared that he had heard and understood what I said. I asked him to repeat the words—he answered "You said 'Mr. Watson—come here—I want to see you.'" We then changed places . . . ." Alexander Graham Bell, Lab notebook (Mar. 10, 1876), available at http://www.loc.gov/exhibits/treasures/trr002.html. Thus, the telephone was born and with it the means for ordinary citizens to communicate with each other at a distance by electronic transmission. (The telegraph had been invented about 40 years earlier, but it required skilled operators trained in Morse code to send and receive messages).

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In 1976, one hundred years after Mr. Bell's historic telephone call with Mr. Watson, the California Legislature enacted the General Corporation Law as part of the California Corporations Code. By this time, Mr. Bell's invention was a ubiquitous business and personal communication tool. The General Corporation Law made provision for then-existing technology by authorizing directors, but not shareholders, to conduct business using conference telephones. The legislature, however, did not anticipate the communications revolution that would begin only 5 years later with the introduction of the personal computer and the concomitant widespread commercialization of Internet technology. Last year, the legislature made an effort to catch up by enacting Stats 2004, ch 254 (SB 1306-Ackerman). This legislation for the first time fully integrates the concept of electronic communications in the General Corporation Law.

"CREEPING BEFORE GOING"—THE CALIFORNIA LEGISLATURE EDGES TOWARD THE ELECTRONIC FUTURE

Although SB 1306 significantly changes the manner of giving notices and conducting meetings under the General Corporation Law, preexisting statutory provisions remain relevant to notices given or actions taken before January 1, 2005.

As originally enacted, the General Corporation Law contemplated that directors and shareholders would normally meet in person. An exception was made in Corp C §307 for directors to participate in meetings by conference telephone call or "similar communications equipment," provided that "all members [of the board] participating in such meeting can hear one another." This proviso effectively precluded the use of communications equipment that did not transmit voices. Similarly, communications by a corporation were limited to then-available technologies. Thus, notice of a special meeting of directors could be given by mail, by personal delivery, or by telephone or telegraph. Notice of shareholders' meetings and any report had to be given personally or by U.S. mail.

In 1991, the legislature took a small step toward acknowledging modern technology when it enacted legislation to expand the definition of the term "proxy" in Corp C §178 to include "an electronic transmission" authorized by a shareholder. Stats 1991, ch 308, §1. This legislation also amended the definition of "signed" for the purpose of §178 to include "other authorization" on the proxy, including by "electronic transmission." Finally, the legislation authorized the transmission of a proxy by oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the shareholder.

AB 699 Amendments to Corp C §307

In 1995, the California legislature enacted AB 640 (Weggeland) (Stats 1995, ch 154) and AB 699 (Cunneen) (Stats 1995, ch 811). Both of these bills amended Corp C §307. However, the amendments effected by AB 699 prevail over those in AB 640 because AB 699 bears a higher chapter number. Govt C §9605. As amended by AB 699, Corp C §307 authorized directors to participate by "electronic video screen communication" or "other communications equipment." Although the terminology used in the bill was awkward, it was significant. For the first time, directors were not limited to voice communication, but could attend a meeting solely by text-only communication. The legislature, however, placed several onerous requirements on the availability of this technology. See Bishop, *The California Corporations Code Enters Cyberspace: 1995 Legislation Tackles New On-Line Technologies*, 18 CEB Cal Bus L Rep 5 (July 1996). Assembly Bill 699 also amended the corresponding provisions of Corp C §§5211, 7211, and 9211.

[P]reexisting statutory provisions remain relevant to notices given or actions taken before January 1, 2005.

Assembly Bill 699 further amended the provisions of §307 relating to the manner of giving notice of a special meeting of directors. The legislation broadened telephone delivery to include a "voice messaging system or other system of technology designed to record and communicate messages." Thus, voice mail and telephone answering machines received their first explicit legislative sanctions. Assembly Bill 699 also authorized delivery of special meeting notices by "facsimile, electronic mail, or other electronic means." In an uncodified section of AB 699, the legislature stated that the amendments were declarative of existing law to the extent that they include facsimile and electronic mail as permissible means of communication of notice of special meetings. Stats 1995, ch 811, §9.

Although AB 699 gave explicit approval to electronic board meetings, it did not authorize shareholder meetings to be held by electronic means. Moreover, AB 699 did not amend Corp C §601 to authorize the

giving of notices of shareholder meetings or the delivery of reports by electronic means.

AB 640 Amendments to Corp C §118

Although AB 640 was not effective to amend §307, it was effective to amend Corp C §118, which was not amended by AB 699. Section 118 defines when notice is given or sent for purposes of the General Corporation Law. As amended, §118 provides that any written notice, "including facsimile, telegram, or electronic mail message" but excluding notice by mail, is given or sent when personally delivered to the recipient or is delivered to common carrier for transmission, or actually transmitted by the person giving the notice by electronic means. Oral notice is given or sent when communicated in person or by telephone, including "a voice messaging system or other system or technology designed to record and communicate messages," or wireless to the recipient, including the recipient's designated voice mailbox or address, or to a person at the office of the recipient who the person giving notice has reason to believe will promptly communicate it to the recipient.

[T]he Uniform Electronic Transactions Act (UETA) . . . established rules and procedures for transactions between parties who have each agreed to conduct the transaction by electronic means.

Although §118 purports to define when notice is sent or given for purposes of the General Corporation Law, legislative intent language included in AB 640 stated that the amendments to Corp C §§118 and 5015 apply only to notices of special meetings of the board pursuant to Corp C §§307, 5211, 7211, and 9211. Stats 1995, ch 154, §21. Thus, the time when notice of shareholders' meetings is required to be sent or deemed given would continue to be governed by Corp C §601(b). Section 601(b) provided that the notice is deemed given at the time when delivered personally or deposited in the mail or "sent by other means of written communication."

AB 699 Sunset Clause

Because the legislature was apparently uncomfortable with the new technologies, it included a "sunset clause" in AB 699 that would have repealed the amendments to §307 on January 1, 1998, unless a later enacted statute deleted or extended that date. In 1997, the legislature enacted legislation that extended the sunset date to January 1, 2003, and rewrote one of the conditions to participation in a meeting through the use of electronic video screen communication or other communication equipment. Stats 1997, ch 136, §1 (AB 389–Cunneen).

Uniform Electronic Transactions Act

In 1999, the legislature took the significant step of enacting the Uniform Electronic Transactions Act (UETA) (Stats 1999, ch 428), codified at CC §§1633.1–1633.17. This legislation, for the first time in California, established rules and procedures for transactions between parties who have each agreed to conduct the transaction by electronic means. Notably, the UETA defined the term "electronic signature" and provided that if a law requires a signature, an electronic signature satisfies that requirement. CC §§1633.2(h), 1633.7(d). Under the UETA, an "electronic signature" means "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." CC §1633.2(h). Unlike Delaware, California did not exclude the General Corporation Law from application of the UETA. See 6 Del Code §12A–103(b)(4). Thus, the provisions of the UETA validating electronic signatures would appear to be applicable to the provisions of the General Corporation Law that require a signature. However, the UETA did not override methods for sending information that are specified in other statutes. Accordingly, if a statute other than the UETA requires that a record be sent, communicated, or transmitted by a specified method, the record generally must be sent, communicated, or transmitted as specified in that statute. CC §1633.8(b)(2) (a statutory requirement to send, communicate, or transmit a record by first class mail may be varied to the extent permitted in that statute). Corporations Code §601(b) is one example in the General Corporation Law of a statute requiring that a record be sent by a specified method.

Removal of the Sunset Clause

After extending the sunset date in AB 699 to January 1, 2004, the legislature finally decided in 2003 to eliminate the sunset clause altogether. Stats 2003, ch 168, §1 (SB 735–Ackerman). According to the analysis prepared for the Assembly Committee on Banking and Finance:

> Today's modern computer video and teleconferencing communication systems that allow for full real-time video and audio communication, as well as document transmission, for participants located practically anywhere in the

world would appear to meet the goals of full and complete board member participation in board meetings.

See Assembly Committee Analysis of SB 735, California State Assembly Committee on Banking and Finance (July 7, 2003). As a further step in the move toward electronic communications, the legislature also enacted SB 220 (Romero) (Stats 2003, ch 273), in 2003 to authorize the Secretary of State and the Department of Corporations to accept for filing documents presented in electronic format. This legislation was necessary in light of an earlier opinion of the California Attorney General to the effect that, notwithstanding the UETA, the Secretary of State was not required to accept for filing documents bearing a facsimile signature. 85 Ops Cal Atty Gen 191 (2002).

CALIFORNIA ENACTS SB 1306

In 2004, the California Legislature enacted SB 1306 (Ackerman) (Stats 2004 ch 254), legislation that for the first time comprehensively addressed electronic communications in the context of meeting notices, delivery of annual reports, and shareholder meetings. The Corporations Committee of the Business Law Section of the California State Bar was the sponsor of the bill. The bill:

- Amended Corp C §§195, 307, 314, 600, 601, 603, 1500, and 1501 (sections of the General Corporation Law);
- Amended Corp C §8;
- Added two new sections to the Corporations Code (Corp C §§20 and 21); and
- Amended numerous sections of California's Nonprofit Corporation Law (Corp C §§5000–10841), Consumer Cooperative Corporation Law (Corp C §§12200–12704), Uniform Partnership Act of 1994 (Corp C §§16100–16962), and Beverly-Killea Limited Liability Company Act (Corp C §§17000–17656).

"Communication is a Two-Way Street"— Key Definitions in SB 1306

The key to understanding the changes wrought by SB 1306 is a careful reading of its definitions. The bill amended the definition of "writing" in Corp C §8 and added two new terms: "electronic transmission by the corporation" (Corp C §20) and "electronic transmission to the corporation" (Corp C §21).

"Writing"

The definition of "writing" in §8 has persevered without change for more than a half century. As defined, a "writing" includes "any form of recorded message capable of comprehension by ordinary visual means." Thus, the medium of writing was not important so long as it could be understood by looking at it. This definition was entirely consistent with Abraham Lincoln's definition of "writing" as "the art of communication of thoughts to the mind, through the eye . . . ." Lincoln, *Second Lecture on Discoveries and Inventions* (Feb. 11, 1859), the Collected Works of Abraham Lincoln, Vol III, p 360 (1953). Under this definition, a typewritten paper, a handwritten note, or a chiseled stone tablet constitutes a "writing." However, a book printed in Braille or a computer punchcard does not. Senate Bill 1306 expanded this definition in the context of communications between a corporation and its shareholders or directors by also including electronic transmissions by and to the corporation, as defined.

SB 1306 . . . for the first time comprehensively addressed electronic communications in the context of meeting notices, delivery of annual reports, and shareholder meetings.

It should be noted that §8 applies to the entire Corporations Code and not simply the General Corporation Law. Corp C §5. The General Corporation Law itself defines "written" and "in writing" in Corp C §195. As amended by SB 1306, these terms include facsimile, telegraphic, and other electronic communication when authorized by the Corporations Code, including an "electronic transmission by the corporation"—a term discussed in greater detail below.

"Electronic Transmission by the Corporation"

A corporation must communicate information to its shareholders. Sometimes this communication is essentially one way, *e.g.*, the sending of a meeting notice or annual report. At other times, the communication is bilateral, *e.g.*, when the shareholders attend and vote at a meeting. Recognizing the two-way nature of corporate communications, the legislature created two defined terms—one for communications *by* the corporation and one for communications *to* the corporation—and established different standards for each of these terms.

New Corp C §20, defining "electronic transmission by the corporation," is complex and imposes requirements concerning (1) the means of transmission, (2) the recipient, and (3) the permanency and legibility of the transmission.

First, an electronic transmission must be effected by one of the following means:

- Facsimile telecommunication or electronic mail directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation;
- Posting on an electronic message board or network that the corporation has designated for those communications, together with a separate notice to the recipient of the posting; or
- Other means of electronic communications.

Second, the recipient of an electronic transmission by a corporation must have provided an unrevoked consent to the use of the above means of communications for communications under or pursuant to the Corporations Code. If the recipient is a shareholder *and* is an individual, §20 imposes a significant additional requirement. In such cases, the transmission must also meet the requirements for consumer consent to electronic records as set forth in the federal Electronic Signatures in Global and National Commerce Act (commonly referred to as the "E-Sign" Act) (15 USC §§7001–7006). See Corp C §20. The E-Sign Act requires that the shareholder be provided with a "clear and conspicuous statement" informing the shareholder of: (1) the right to receive the transmission in non-electronic form; (2) the right to withdraw consent; (3) whether the consent applies only to an individual transaction or to categories of transactions; (4) the procedures to withdraw consent; and (5) how, after consent, the shareholder may request a paper copy of the document. Further, before consenting, the shareholder must be provided with a statement of the hardware and software requirements to access the electronic transmission, and the shareholder consents (or confirms consent) in a manner that reasonably demonstrates that the shareholder can access the information in electronic form. The E-Sign Act imposes further requirements in the event that a change in the hardware or software creates a material risk that the shareholder will not be able to access and retain the electronic information. 15 USC §7001(c).

The special requirements applicable to electronic transmissions by a corporation to an individual shareholder were not included in SB 1306 as originally introduced. Although the desire to protect consumers is understandable, the effect of these requirements is to impose significant burdens on electronic communications and possibly cast doubt on the validity of corporate actions involving electronic transmissions. For example, in order to conclude that a meeting was duly noticed by electronic transmission, counsel may need to confirm that not only the requirements for content, timing, and manner of giving notice, but also the detailed E-Sign consent requirements, have been satisfied. Notably, the recently released 2005 Report of the Corporations Committee of the Business Law Section of the California State Bar on Legal Opinions in Business Transactions does not provide any substantive guidance on this point:

> No doubt customary practice will develop in due course . . . . Until then, opinion givers rendering a "duly authorized" opinion for a Company that follows the procedures permitted by SB 1306 will face special challenges in determining that the Company has satisfied the requirements for doing so.

Third, both Corp C §§20 and 21 (discussed below) require that the communication create a record that is capable of retention, retrieval, and review. In addition, the record must be capable of being rendered into clearly "legible tangible form."

"Electronic Transmission to the Corporation"

Senate Bill 1306 also addressed communications directed to the corporation by adding new Corp C §21 to define "electronic transmission to the corporation." In large part, this definition mirrors §20 and includes communications delivered by facsimile, e-mail, posting on an electronic message board, or other means. There are some differences between the two statutes. If an electronic message board is used to communicate to the corporation, there is no requirement as in §20 that there be a separate notice of posting. Hence, the communication to the corporation will be validly delivered on posting. Further, §21 requires that the corporation have in effect reasonable measures to verify that the sender is the shareholder or director purporting to send the transmission**.**

Amendments to Articles and Bylaws

These new and changed definitions do not require a corporation to adopt any amendments to either its bylaws or articles of incorporation. Practitioners should be aware, however, that the meaning of a "writing" has changed. Moreover, failure to update bylaws may prevent a corporation from taking advantage of the newly authorized means of providing notice or holding meetings of the board of directors and shareholders.

Changes in Noticing Meetings of Directors

As a result of SB 1306, it is now clear that a corporation may give notice of directors' meetings by "electronic transmission by the corporation," as defined in Corp C §20. Corp C §307(a). Unfortunately,

this has had the unintended consequence of imposing the requirements of §20 on notices sent by facsimile or electronic mail. (Under AB 699, discussed above, there were no special requirements for these types of notices.) This means that it will not be sufficient to confirm that a meeting notice was sent by facsimile or electronic mail. Counsel must now be alert to satisfaction of all of the definitional elements of an "electronic transmission by the corporation" in new §20.

California has permitted board meetings by "electronic video screen communication" since 1995. Senate Bill 1306 continues to authorize such participation with the proviso that all members of the board are able to hear one another.

It should be noted that the General Corporation Law permits the articles of incorporation, or (subject to Corp C §204(a)(5) (supermajority vote)) the bylaws, to vary the requirements of Corp C §307(a), but not to dispense with the requirement of notice of a special meeting of the board. See Corp C §307(a)(2). Existing bylaw provisions with respect to the manner of giving notice should therefore continue to be effective. However, they would not allow the corporation to utilize the provisions of SB 1306.

Following is an example of a bylaw clause providing for the giving of notice of special meetings of the board of directors in accordance with SB 1306 (Corp C §307(a)(2)):

***SPECIAL MEETINGS*. Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board, or the president, or any vice president, or the secretary, or any two directors. Notice of the time and place of special meetings shall be delivered personally or by telephone, including voice messaging system or by electronic transmission by the corporation, to each director, or sent by first class mail addressed to each director at his or her address as it is shown on the records of the corporation. In case such notice is mailed, it shall be deposited in the United States mail, postage prepaid, at least four (4) days prior to the time of the holding of the meeting. In case such notice is delivered personally, or by telephone (including by voice messaging system or by electronic transmission by the corporation), it shall be delivered personally or by telephone at least forty-eight (48) hours prior to the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated to either the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose of the meeting nor the place if the meeting is to be held at the principal executive office of the corporation.**

Participation in Meetings of the Board of Directors

As discussed above, California has permitted board meetings by "electronic video screen communication" since 1995. Senate Bill 1306 continues to authorize such participation with the proviso that all members of the board are able to hear one another. Corp C §307(a)(6). This is a change from existing law, which has imposed several additional requirements since the enactment of AB 699. Senate Bill 1306 therefore constitutes a relaxation of the requirements for conference call and electronic video screen meetings. Additionally, SB 1306 adds the possibility of participating by electronic transmission by and to the corporation. However, each member must be able to communicate with all of the other members *concurrently* and be provided with the means of participating in all matters before the board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation. Corp C §307(a)(6).

Practitioners will face two issues with respect to existing bylaws. First, existing bylaws are likely to include the more stringent requirements imposed by AB 699 and subsequent amendments. Because Corp C §307(a) permits either the articles of incorporation or the bylaws to vary its requirements, the bylaw provisions would continue to govern notwithstanding enactment of SB 1306. Second, existing bylaws will not permit participation by electronic transmission by and to the corporation.

Following is an example of a bylaw provision that conforms to SB 1306 (Corp C §307(a)):

***PLACE OF MEETINGS*; *PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER MEANS*. Regular meetings of the board of directors shall be held at any place within or without the State that has been designated from time to time by resolution of the board. In the absence of such designation, regular meetings shall be held at the principal executive office of the corporation. Special meetings of the board shall be held at any**

place within or without the State that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, at the principal executive office of the corporation. Members of the board of directors may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation. Participation in a meeting through the use of conference telephone or electronic video screen communication shall constitute presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation through electronic transmission by or to the corporation (other than by conference telephone and electronic video screen communication) constitutes presence in person if: (1) each member participating in the meeting can communicate with all of the other members concurrently; and (2) each member is provided the means of participating in all matters before the board of directors, including, without limitation, the capacity to propose, or to interpose an objection to, a specified action to be taken by the corporation.

Electronic Shareholder Meetings

As discussed above, AB 699 did not authorize shareholder meetings by electronic communication. Senate Bill 1306 authorizes a corporation to conduct a shareholder meeting in whole or in part by electronic transmission by and to the corporation or by electronic video screen communication, if the following conditions are satisfied (Corp C §600(e)):

- The corporation implements reasonable measures to provide shareholders (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings; and
- If any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation.

In drafting SB 1306, the Corporations Committee was concerned about the possibility that some shareholders would not have the requisite technology to participate in a meeting held entirely by electronic transmissions. Therefore, the Committee included a requirement that the corporation hold the meeting at a physical location if any individual shareholder does not consent. Any request for consent under Corp C §20(b) must notify the shareholder that this will be the case. See Corp C §600(e). This does not mean that the corporation will be precluded from holding the meeting in part by electronic transmissions—only that the meeting be held at a physical location where the non-consenting shareholder(s) may appear in person or by proxy.

[E]xisting bylaws should be conformed to the new provisions of SB 1306 if the corporation anticipates shareholder participation by electronic transmission by and to the corporation.

Senate Bill 1306 imposes a number of specific limitations on shareholder presence other than in person or by proxy. The board of directors must authorize such presence, and the board has sole discretion to do so. Second, the shareholder's presence will be subject to the guidelines and procedures, if any, adopted by the board of directors. Corp C §600(a).

Unlike Corp C §307, the requirements of §600 may generally not be varied by either the articles of incorporation or the bylaws. The bylaws may, however, prohibit shareholder attendance other than in person or by proxy. See Corp C §600(a). This means that existing bylaws should be conformed to the new provisions of SB 1306 if the corporation anticipates shareholder participation by electronic transmission by and to the corporation.

Following is an example of a bylaw provision that tracks SB 1306 (Corp C §600):

***PLACE OF MEETINGS*. Meetings of shareholders shall be held at any place within or without the State of California designated by the board of directors. In the absence of any such designation, shareholders' meetings shall be held at the principal executive office of the corporation. If authorized by the board of directors (in its sole discretion) and subject to the requirement of consent in clause (b) of Section 20 of the California Corporations Code and any guidelines and procedures adopted by the board of directors, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation or by electronic video screen communication, participate in a meeting of shareholders, be deemed present in person or by proxy and vote, whether that meeting is to be held at a designated place or in whole**

or in part by means of electronic transmission by and to the corporation or by electronic video screen communication.

***MEETINGS BY ELECTRONIC TRANSMISSION OR ELECTRONIC VIDEO COMMUNICATION*. A meeting of shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication if:**

(a) The corporation implements reasonable measures to provide shareholders (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to shareholders; and

(b) A record of vote or action is maintained by the corporation if any shareholder votes or other shareholder action is taken at the meeting by means of electronic transmission to the corporation or electronic video screen communication.

Any request by the corporation to a shareholder pursuant to clause (b) of Section 20 of the California Corporations Code for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation, shall include a notice that absent consent of the shareholder pursuant to such clause, the meeting will be held at a physical location.

Notice of Meetings

Obviously, stockholders will need to have notice of the means of electronic transmission if the meeting is to be held by electronic transmissions. Senate Bill 1306 accordingly amends Corp C §601(a) to provide that notice of a shareholders' meeting must specify the means of transmission if shareholders are to participate by such means. (Curiously, there is no analogous requirement in Corp C §307 with respect to meetings of the board of directors).

Section 601 has also been amended to specify that notice may be given by electronic transmission by the corporation. However, such notice is valid only if it complies with Corp C §20. See Corp C §601(b). Moreover, notice may not be given by electronic transmission by the corporation after either:

- The corporation is unable to deliver two consecutive notices to the shareholder by that means; or
- The inability to deliver the notices to the shareholder becomes known to the secretary, or any assistant secretary, the transfer agent, or other person responsible for giving the notice.

Counsel may wish to add these limitations to the notice provisions of existing bylaws and include them in the bylaws when organizing new corporations.

Actions Without a Meeting

Senate Bill 1306 did not amend Corp C §307(b), which authorizes action by unanimous written consent. By expanding the definition of "writing" in Corp C §§8 and 195, however, the bill has effectively authorized directors to take such action by electronic communications to the corporation, as defined in Corp C §21.

With respect to shareholder action without a meeting, the same general scheme applies. However, SB 1306 did amend Corp C §603(b) to specify that notice must be given as provided in Corp C §601(b).

Annual Reports

Formerly, Corp C §1501 made no provision for the electronic delivery of annual reports. Senate Bill 1306 now permits the delivery of annual reports by electronic transmission if approved by the board of directors. Either the articles of incorporation or bylaws can prohibit electronic delivery. See Corp C §1501(a).

CONCLUSION

Senate Bill 1306 represents a significant change to fundamental corporate housekeeping. Unfortunately, the legislature's incremental approach has left practitioners with an evolving and changing set of requirements and limitations. This means that review of corporate actions that occurred before the effective date of SB 1306 will require an understanding of outdated rules. In light of these changes, practitioners should evaluate the bylaws of existing corporations and develop new forms for corporations to be formed.